

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Innovative Medical Systems,
Inc., a Missouri Corporation;
Genesis Medical Inc., an
Indiana Corporation; SC Medical,
LLC, a Louisiana Corporation;
Associated Provider Services
Inc., a Georgia Corporation;
Advanced Therapeutics of
Wisconsin, Inc., a Wisconsin
Corporation; Blackburn's
Physician's Pharmacy, Inc., a
Pennsylvania Corporation;
and SKMR, Inc., f/k/a Recovery
Care, Inc., a New Jersey
Corporation,

Plaintiffs,

vs.

REPORT AND RECOMMENDATION

Augustine Medical, Inc., a
subsidiary of Arizant, Inc., a/k/a
AMI; Arizant, Inc.; Scott D.
Augustine, individually and as
CEO of AMI; James Benham,
individually and as General
League Counsel of AMI; Paul
Johnson, individually and as
Director of Reimbursement of
AMI; Tim Hensley, individually
and as National Sales Manager

of AMI; Phillip Zarlengo,
individually and as CEO of Health
Finance and Marketing, Inc.;
Health Finance and Marketing,
Inc., d/b/a Strategic Reimbursement,
a/k/a PCZ Marketing and Finance
Corp.,

Defendants.

Civ. No. 07-659 (PJS/RLE)

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This matter came before the undersigned United States Magistrate Judge upon a routine supervision of cases filed in this Division, and upon an assignment made in accordance with Title 28 U.S.C. §636(b)(1)(B).

This matter was commenced on January 1, 2007, by the filing of a Complaint with the Clerk of Court. On June 11, 2007, it having appeared that one hundred and twenty (120) days had passed and the Defendants Augustine Medical, Inc., Arizant, Inc., Scott D. Augustine, James Benham, Paul Johnson, and Tim Hensley, had not been served with the Complaint and Summons as required by Rule 4(m), Federal Rules of Civil Procedure, this Court issued an Order, which stated as follows:

That the Plaintiffs are directed to show good cause, in writing, within twenty (20) days of the date of this Order, for an extension of time in which service can be effectuated. In the absence of good cause shown, the Court shall Recommend that this action be dismissed for failure to

effect proper service upon the Defendants Augustine Medical, Inc., Arizant, Inc., Scott D. Augustine, James Benham, Paul Johnson, and Tim Hensley, and for failure of prosecution.

On June 14, 2007, the Defendants Augustine Medical, Inc., and Arizant, Inc., filed a Motion to Dismiss, see, Docket No. 6, that is scheduled for Hearing before the District Court, the Honorable Judge Patrick J. Schiltz presiding, in St. Paul, Minnesota, on August 31, 2007.

On July 2, 2007, the Plaintiffs filed a Response to our Order of June 11, 2007, see, Docket No. 13, in which they acknowledged that service has not been effected on the Defendants Scott D. Augustine, James Benham, Paul Johnson, and Tim Hensley. The Plaintiffs have not shown good cause for the failure to serve the foregoing Defendants, and they do not request additional time in which to do so.

As a result, the Plaintiffs have failed to abide by the terms of our Order of June 11, 2007. Since we previously forewarned the Plaintiffs of the potential consequences for their failure to timely serve the Defendants Scott D. Augustine, James Benham, Paul Johnson, and Tim Hensley, and to abide by the Orders of this Court, we recommend that this action be dismissed, without prejudice, as to the Defendants Scott D. Augustine, James Benham, Paul Johnson, and Tim Hensley, for failure to

comply with this Court's Order of June 11, 2007, for failure to effect proper service, and for lack of prosecution.

NOW THEREFORE, It is --

RECOMMENDED:

That this action be dismissed, as to the Defendants Scott D. Augustine, James Benham, Paul Johnson, and Tim Hensley, for failure to comply with this Court's Order of June 11, 2007, for failure to effect proper service, and for lack of prosecution.

BY THE COURT:

Dated: July 5, 2007

s/Raymond L. Erickson

Raymond L. Erickson

CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than July**

20, 2007, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than July 20, 2007**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.